

UNCLASSIFIED

L17E
RELEASED IN FULL

ATTACHMENT C

STATE-BY-STATE PLANS FOR THE
UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS
ON NON-FEDERAL LANDS DURING CONSTRUCTION OF THE
KEYSTONE PROJECT PIPELINE

I. For construction of the Keystone Project pipeline in Illinois, TransCanada will implement the following measures:

1. When an unmarked human burial or unregistered grave is encountered during construction activities, TransCanada will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act).
2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. The Environmental Inspector will notify the county coroner, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.
5. Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the coroner refers the matter to the SHPO, the SHPO will determine the treatment, including mitigation and disposition of the unmarked human burial or unregistered grave in accordance with Title 17, Chapter VI, Section 4170. TransCanada will implement the treatment and disposition measures deemed appropriate by the SHPO.
6. TransCanada will resume construction activities in the area of the discovery upon receipt of written authorization from either the county coroner or the Illinois SHPO, whomever has jurisdiction under state law.

II. For construction of the Keystone Project pipeline in Kansas, TransCanada will implement the following measures:

1. When unmarked human burial sites or human skeletal remains are encountered during construction activities, TransCanada will comply with Kansas' Unmarked Burial Sites Preservation Act (KSA 75-2741 to 75-2754) and its implementing regulations (KAR 126-1-1 through 126-1-2).

Programmatic Agreement
ATTACHMENT C

C-1

Keystone Pipeline Project
January 30, 2008

UNCLASSIFIED

UNCLASSIFIED

2. Upon encountering unmarked human burial sites or human skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and
 - o notify the appropriate county sheriff's office, the chairperson of the Unmarked Burial Sites Preservation Board (Kansas State Archaeologist), the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, of the discovery.
4. If TransCanada determines that disturbance to the unmarked burial site or human remains cannot be avoided, TransCanada will consult with the DOS, the SHPO and other consulting parties to develop a detailed work plan for treatment of the burial site or human remains that includes provisions for the removal, treatment and disposition of human remains. In accordance with state law, TransCanada will submit this work plan to the Unmarked Burial Sites Preservation Board as part of its request for a permit under KAR 126-1-2.
5. TransCanada will resume construction activities in the area of the discovery once implementation of the measures authorized under the permit has been completed.

III. For construction of the Keystone Project pipeline in Missouri, TransCanada will implement the following measures:

1. When an unmarked human burial or skeletal remains are encountered during construction activities, TransCanada will comply with Missouri Rev. Stat. § 194.400, et seq. (Unmarked Human Burial Law).
2. Upon encountering unmarked human burials or skeletal remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed; and

UNCLASSIFIED

- o notify the local law enforcement officer, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes, of the discovery.

4. The investigation by the local law enforcement officer will establish jurisdiction over the remains. TransCanada's Environmental Inspector will notify the SHPO when local law enforcement determines that the SHPO has jurisdiction. Within seven (7) days of receipt of such notification, the SHPO will determine the treatment to be implemented by TransCanada in accordance with Missouri Rev. Stat. § 194.400, et seq. The disposition of the human remains will be determined based on Missouri Rev. Stat. § 194.408 and § 194.409. TransCanada will assist the SHPO in implementing the provisions of state law.
5. If an inadvertent discovery occurs on the 2.3 acre portion of the NRCS WRP easement (subordinated to DOS for purposes of installation of the pipeline), the landowner, applicant and DOS also agree to notify NRCS and review the discovery and consult with the SHPO and concerned tribes (including the Osage Tribal Historic Preservation Officer) in accordance with procedures set forth in 36 CFR Part 800 and NRCS' National Cultural Resources Procedures Handbook (Directive 190-VI-NCRPH, First Edition, August 2001, and policy in the NRCS General Manual Chapter) (Directive 420 Part 401), thereby ensuring both appropriate treatment or mitigation of adverse effects and disposition of all cultural resources study records and material remains in a repository that is consistent with the standards established in 36 CFR Part 79.
6. TransCanada will resume construction activities in the area of the discovery upon receipt of written authorization from either local law enforcement or the Missouri SHPO, whomever has jurisdiction under state law.

IV. For construction of the Keystone Project pipeline in Nebraska (Cushing Extension, TransCanada will implement the following measures:

1. When unmarked human skeletal remains or burial goods are discovered during construction activities, TransCanada will comply with Nebraska Rev. Stat. § 12-1201 through § 12-1212, et seq. and § 28-1301.
2. Upon encountering unmarked human skeletal remains or burial goods during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
4. TransCanada will notify the local law enforcement officer in the county, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO), and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.

UNCLASSIFIED

UNCLASSIFIED

5. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will conduct the removal, treatment and disposition of the human burial or remains under the direction of the Nebraska State Historical Society.
6. TransCanada will resume construction activities in the area of the discovery when the human skeletal remains or burial goods have been accepted by the Nebraska State Historical Society for the purposes of disposition.

V. For construction of the Keystone Project pipeline in North Dakota, TransCanada will implement the following measures:

1. When unmarked human burials or human remains are discovered during construction activities, TransCanada will comply with North Dakota Century Code §23-06-27 and administrative rules North Dakota Administrative Code Chapter 40-02-03.
2. Upon encountering unmarked human burials or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - o notify the local law enforcement agency, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO)/State Historical Society of North Dakota (SHSND), other consulting parties, including Indian tribes, and the State Department of Health of the discovery.
4. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will remove and reinter the human remains in accordance with rules adopted by the SHPO/SHSND and the State Health Department.
5. TransCanada will resume construction activities in the area of the discovery once implementation of the measures required by the SHPO/SHSND and State Health Department have been completed.

VI. For construction of the Keystone Project pipeline in Oklahoma (Cushing Extension, TransCanada will implement the following measures:

UNCLASSIFIED

1. When a burial ground, human remains or burial furniture is discovered during construction activities, TransCanada will comply with Okla. Stat. Ann. 21 §1161-1168.7 (Oklahoma Burial Law).
2. Upon encountering a burial ground, human remains or burial furniture during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will
 - o ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery;
 - o implement additional measures, as appropriate, to protect the discovery from looting and vandalism until the completion of requirements under state law; and
 - o notify the appropriate law enforcement officer in the county in which the remains have been discovered, the Chief Medical Examiner, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO) and other consulting parties, including Indian tribes and the landowner, of the discovery.
4. Upon learning that remains are not associated with a crime, TransCanada has fifteen (15) days within which to notify the SHPO and the Oklahoma State Archaeologist. If TransCanada determines that disturbance cannot be avoided, TransCanada will treat the burial site or human remains in accordance with procedures established by the SHPO and Oklahoma State Archaeologist.
5. TransCanada will resume construction activities in the area of the discovery upon completion of the measures authorized by the SHPO and Oklahoma state archaeologist.

VII. For construction of the Keystone Project pipeline in South Dakota, TransCanada will implement the following measures:

1. When a unmarked human burial or human remains is discovered during construction activities, TransCanada will comply with South Dakota State Law Chapter 34-27.
2. Upon encountering an unmarked human burial or human remains during ground disturbing construction activities, the construction contractor will immediately stop work within a one-hundred (100) foot radius from the point of discovery and notify TransCanada's Environmental Inspector. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
3. Immediately following receipt of such notification, the Environmental Inspector will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

Programmatic Agreement
ATTACHMENT C

C-5

Keystone Pipeline Project
January 30, 2008

UNCLASSIFIED

UNCLASSIFIED

4. The Environmental Inspector will notify the local law enforcement agency, the Department of State (DOS), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Office (SHPO), the South Dakota State Archaeologist and other consulting parties, including Indian tribes, within forty-eight (48) hours of the discovery.
5. If local law enforcement determines that the remains are not associated with a crime, TransCanada will determine if it is prudent and feasible to avoid disturbing the remains. If TransCanada determines that disturbance cannot be avoided, TransCanada will consult with the South Dakota state archaeologist and other consulting parties, including Indian tribes, to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. TransCanada will implement the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota state archaeologist.
6. TransCanada may resume construction activities in the area of the discovery upon completion of the plan authorized by the state archaeologist.

UNCLASSIFIED

UNCLASSIFIED

CONTACTS

A. FEDERAL

Department of State

Elizabeth A. Orlando, Esq.
U.S. Department of State
OES/ENV
Foreign Affairs Officer
Multilateral Team
202-647-4284
fax: 202-647-1052
cell: 240-723-3157
orlandoea2@state.gov

Advisory Council on Historic Preservation

Don L. Klima
Director
Office of Federal Agency Programs
1100 Pennsylvania Avenue, NW
Suite #803
Washington, D.C. 20004
dklima@achp.gov

Charlene Dwin Vaughn
Assistant Director
Office of Federal Agency Programs
1100 Pennsylvania Avenue, NW
Suite #803
Washington, D.C. 20004
cvaughn@achp.gov

B. STATES

Illinois:

Ms. Anne Haaker
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency
One Old Capitol Plaza
Springfield, IL 62701
217-785-5027
anne.haaker@illinois.gov

Kansas:

Bob Hoard
Kansas State Archaeologist
Kansas State Historical Society
6425 SW 6th Avenue
Topeka, KS 66615-1099
785-272-8681 ext. 269
rhoard@kshs.org

Jennie Chinn
State Historic Preservation Officer
Kansas State Historical Society
6425 SW Sixth Avenue
Topeka, Kansas 66615-1099
785-272-8681 ext. 205
fax 785-272-8682
jchinn@kshs.org

Programmatic Agreement
ATTACHMENT C

C-7

Keystone Pipeline Project
January 30, 2008

UNCLASSIFIED

UNCLASSIFIED

Missouri:

Mark A. Miles
Director/Deputy State Historic Preservation Officer
State Historic Preservation Office
Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
573-751-7862

Judith Deel
Archaeologist
State Historic Preservation Office
Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
573-751-7862
Judith.deel@dnr.mo.gov

Nebraska:

Terry L. Steinacher
State Historic Preservation Office
Nebraska State Historical Society
P.O. Box 283
Fort Robinson Museum
Crawford, Nebraska 69339
308-665-2918
fax: 308-665-2917

Gayle Carlson
State Archaeologist
Nebraska State Historical Society
Department of Archeology
P.O. Box 82554
Lincoln, Nebraska 68501
402-471-4790
fax: 402-471-3100

North Dakota:

Paul R. Picha, Chief Archaeologist
North Dakota State Historic Preservation Office
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, North Dakota 58505-0830
701-328-3574

Oklahoma:

Charles Wallis
Historical Archeologist/
Section 106 Program Coordinator
State Historic Preservation Office
Oklahoma Historical Society
Oklahoma History Center
2401 N. Laird Avenue
Oklahoma City, OK 73105-7914
405-521-6249

Robert L. Brooks
State Archaeologist
Oklahoma Archeological Survey
111 E. Chesapeake, Room 102
Norman, OK 73019-5111
405-325-7211
fax 405-325-7604

South Dakota:

Jay D. Vogt
State Historic Preservation Officer
South Dakota State Historic Preservation Office
900 Governors Drive
Pierre, South Dakota 57501-2217
605-773-3458

UNCLASSIFIED

C. CONSULTING TRIBES

Blackfeet
Cherokee Nation
Cheyenne-Arapaho
Chippewa-Cree
Delaware Nation
Flandreau Santee Sioux
Forest County Potawatomi
Fort Peck
Fort Sill Apache
Ho-Chunk of Wisconsin
Iowa Tribe of KS and NE
Iowa Tribe of OK
Kaw Nation
Kickapoo of OK
Lower Sioux
MHA Nation
Miami Tribe of OK
Mille Lacs Band of Ojibwe
Muscogee Creek
Northern Arapaho
Oglala Sioux
Osage Tribe
Pawnee Nation
Pokagon Band of Potawatomi
Ponca of OK
Ponca Tribe of NE
Rosebud Sioux
Sac and Fox of NE and KS
Sac and Fox of OK
Santee Sioux of NE
Sisseton-Wahpeton Oyate
Sisseton-Wahpeton Oyate Wahpekute
Spirit Lake Nation
Standing Rock Sioux
Tonkawa Tribe
United Keetoowah Band of Cherokee
Yankton Sioux

UNCLASSIFIED